

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
04-CV-102(JMR/JSM)

David J. Gherity )  
 )  
 v. ) ORDER  
 )  
 Lori Swenson et al. )

Plaintiff, pro se, objects to the Report and Recommendation, issued February 20, 2008 [Docket No. 67], by the Honorable Janie S. Mayeron, United States Magistrate Judge. The Report recommended the remand by the Eighth Circuit Court of Appeals be deemed moot; that respondents' motion to dismiss be denied; that petitioner's motion to renew his February 23, 2004, motions be denied in part and granted in part; and that petitioner's motion to strike respondents' motion to dismiss be denied. Plaintiff's objections were timely filed pursuant to Local Rule 72.2.

Based upon a de novo review of the record herein, the Court adopts the Magistrate's Report and Recommendation.

Accordingly, IT IS ORDERED that:

1. The stay and abeyance issue which the Eighth Circuit Court of Appeals directed the Court to consider in its remand is deemed moot [Docket No. 28].
2. Respondents' motion to dismiss is denied [Docket No. 32].
3. Petitioner's motion to renew his February 23, 2004, motions is denied in part and granted in part [Docket No. 38].

4. Petitioner's motion to strike respondents' motion to dismiss is denied [Docket No. 49].

Dated: March 25, 2008

s/ JAMES M. ROSENBAUM

JAMES M. ROSENBAUM

United States Chief District Judge